JD(ATL)–28–14
Holly Hill, FL

5UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISON OF JUDGES
ATLANTA BRANCH OFFICE

ANGELICA TEXTILE SERVICES, INC.

and **CASE 12–-CA–118367**

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 385

Thomas Brudney, Esq., for the General Counsel[1]
Thomas G. Bearden, Esq., for the Respondent. [2]
Thomas J. Pilacek, Esq., for the Charging Party[3]

DECISION

Statement Of The Case

WILLIAM NELSON CATES, Administrative Law Judge. This case was tried before me in Daytona Beach, Florida, on July 14 and 15, 2014. The charge initiating this matter was filed on December 5, 2013[4], and amended on February 26, 2014. The Government issued a complaint and notice of hearing (complaint) on April 30, 2014.[4] The complaint alleges the Company, on dates in June and July, at its Holly Hill facility, by its Service Manager Troy Emmett: solicited employees to resign their membership in the Union and revoke their authorizations for the deduction of union dues and fees from their wages; provided employees with letters of resignation of membership in the Union and revocation of authorization for the deduction of union dues and fees from wages; initiated employee efforts to solicit other employees to resign their membership in the Union and revoke their authorizations for the deduction of union dues and fees from their wages; interrogated employees about their union membership, activities and sympathies, and the union membership, activities, and sympathies

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1 I shall refer to counsel for the General Counsel as counsel for the Government and to the General Counsel as the Government.

2 I shall refer to counsel for the Respondent as counsel for the Company and to the Respondent as the Company.

3 I shall refer to counsel for the Charging Party as counsel for the Union and to the Charging Party as the Union.

4 All dates are in 2013 unless otherwise indicated.

4 An amendment to complaint issued on June 30, 2014 and a further amendment to complaint issued on July 3, 2014

of other unit employees; solicited complaints and grievances from employees and implied the Company would remedy them in order to discourage employees from joining or supporting the Union, and to encourage employees to resign from the Union and to revoke their authorizations for the deduction of union dues and fees from wages. It is further alleged that on dates in October and November the Company, at its Holly Hill facility, by its Service Manager Emmett: posted antiunion materials on the union bulletin board, and, interrogated employees about their union membership, activities and sympathies, and the union membership, activities and sympathies of other unit employees. It is alleged the above acts of the Company violate Section 8(a)(1) of the National Labor Relations Act (the Act). It is also alleged the Company, on or about July 19, ceased making validly authorized deductions of union dues and fees from the wages of unit employees and ceased remitting union dues and fees to the Union, on the basis of invalid revocations of authorizations of union dues and fees that had been solicited directly or indirectly by the Company. It is alleged these terms and conditions of employment are mandatory subjects for collective bargaining, and that the Company ceased making the validly authorized deduction without the consent of the Union in violation of Section 8(a)(1) and (5) of the Act.

The Company in its answer to the complaint, and at trial, denies having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified and I rely on those observations in making credibility determinations. I have studied the whole record, the pos trial briefs, and the authorities cited. Based on the detailed findings and analysis below, I conclude and find the Company violated the Act substantially as alleged in the complaint.

FINDINGS OF FACT

I. Jurisdiction, Labor Organization Status, Bargaining Unit, Collective-Bargaining Agreement and Supervisory/Agency Status

The Company is a Missouri corporation with an office and place of business in Holly Hill, Florida, providing linen, textile, and laundry services to hospitals, clinics, and long-term health care facilities. During the 12 months preceding the issuing of the complaint, the Company purchased and received at its Florida facility goods valued in excess of $50,000 directly from points located outside the State of Florida. The parties admit, the evidence establishes, and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit, and I find, that at all times material here, the International Brotherhood of Teamsters, Local Union No. 385, has been, and continues to be, a labor organization within the meaning of Section 2(5) of the Act.

It is admitted that all full-time and regular part-time drivers employed by the Company at its Holly Hill, Florida facility (the unit), constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and based on Section 9(a) of the Act the Union has been, and continues to be, the exclusive collective-bargaining representative of the unit. The Company's recognition of the Union as the bargaining representative of the unit has been embodied in a collective-bargaining agreement effective from July 24, 2012, through July 24, 2015.

It is admitted that Director of Labor Relations Richard Martwick, Plant Manager Rose Batista, and Service Manager Troy Emmett are supervisors and agents of the Company within the meaning of Section 2(11) and Section 2(13) of the Act.

II. Alleged Unfair Labor Practices

A. Facts

1. Background

The Company, in providing medical linen laundry services to healthcare providers, has approximately 27 facilities located throughout the United States including its laundry facility at Holly Hill, Florida, the only location involved here. In carrying out its services, the Company utilizes drivers to collect and transport the soiled linens from the healthcare facilities to be cleaned at its Holly Hill laundry, and, then return the cleaned linens to the healthcare facilities.

2. The union campaign and certification

Sometime before early 2012, at least some of the drivers, it appears, were unhappy with their then service manager, "Charlie." One of the drivers contacted the Union to find out what the Union could do for the drivers and about the Union representing them. There were approximately 10–12 drivers at the time. Local 385 Business Agent and Organizer Roger Allain met with approximately eight-nine drivers at the home of driver Warren Hall in early 2012. Allain testified about conducting the meeting and what he told the drivers.[5] He explained he conducted organizational meetings in a "pretty regimented" manner and did so in each campaign. Allain explained the dues structure informing the drivers dues are based on employees' hourly wage rate and no dues would be collected until a petition for an election had been filed with the Board, an election held, a certification issued, a collective-bargaining agreement arrived at and ratified by the drivers. After his explanation of union representation, Allain told the drivers that before they signed anything he wanted them to collectively talk, and think about it, and make sure that is what they wanted to do because this was serious business. Allain went outside Warren's home so the drivers could meet without him. When he returned the drivers wanted to go forward with union representation. Allain gave the drivers application for membership and dues-checkoff authorization and assignment cards which those present signed. On the applications Allain sometimes wrote the employer's name and lined through the

[5] Allain's testimony was candid, consistent and his demeanor persuaded me he testified truthfully. Thus, I credit his testimony.

initiation fee portion of the application because new groups coming into the Union do not pay initiation fees. The drivers were instructed not to date either their application for membership or the dues-checkoff authorization cards because they would not to be dated until a collective-bargaining agreement had been ratified. Driver Dirk Drehobl was elected union steward and Tony Emanuel an alternate. Allain observed drivers David Hausen, Terry Richardson, Dirk Drehobl, Rick Cerey, Alex Oxendine, Arnold Wolfe, and Christopher Robertson sign their cards that evening. At a later meeting Allain observed Warren Hall sign his card and was given a card signed by driver Tony Emanuel. The parties stipulated that two other drivers, employed at the time, namely Francisco Ruiz and Ronald Bashaw, signed cards but are no longer employees of the Company. Allain testified he did not explain to the drivers their financial obligations to the Union if they resigned their membership because he was not asked, and, because the drivers came to him about joining the Union rather than what would happen, dues wise, if they got out of the Union.

The Union won the Board conducted election, and was certified on January 19. Allain, as was his practice in organizing campaigns, gave the dues-checkoff authorization and application for membership cards he obtained to the local union. An agreed to collective-bargaining contract was ratified on October 6. The Company commenced deducting and remitting dues to the Union in October 2012 and did so until July. The Company deducted and remitted dues even though none of the dues deduction authorization cards were dated. Union Business Agent Dalton specifically testified, without contradiction, no one from the Company, from October 2012 to July, objected, or raised concerns, the deduction authorizations were in any manner invalid. The parties' collective-bargaining agreement, at article 19 pages 15 and following, address, in part, union dues and related deductions as; "the Employer agrees to deduct from the pay of all employees covered by the Agreement, who authorize such deductions, dues, initiation fees and/or uniform assessments . . . payroll deductions shall be allowed, provided proper authorization is given and the only requirement assumed by the Employer shall be the deduction as specified . . ." As reflected above there were 11 drivers in October 2012. As of July, when the Company ceased deducting and remitting dues to the Union (except for one driver), there were nine drivers in the Union: Rick Cerey, Dirk Drehobl, Tony Emanuel, Warren Hall, David Hausen, Terry Richardson, Christopher Robertson, Alex Oxendine, and Arnold Wolfe.

3. The resignation letters

Driver Hausen, testifying for the Company, said there came a time when he was sorry he joined the Union. Hausen first discussed, with his wife, his concerns about how much was being taken from his wages for union dues and then spoke, more than once, with Service Manager Emmett asking if there was any way Emmett could "help us get out of this." Emmett, weeks or months later, told Hausen he had talked with a company lawyer who was going to see if there was some way they could get out of the Union. Thereafter Emmett told Hausen he had a document Hausen could sign to get out of the Union. Hausen signed the document resigning from the Union, in Emmett's office around July 16, and immediately returned it to Emmett.

Driver/Union Steward Drehobl, testifying for the Company, stated that in June/July a fellow driver told him Service Manager Emmett had given him a letter to sign if he wanted to

get out of the Union and also told Drehobl if he wanted out to go to Emmett and get a copy of the letter. A few days later Drehobl went to Emmett's office where Emmett printed, from his computer, a copy of the resignation letter for Drehobl. A couple of days later on July 14, Drehobl signed the resignation letter. Drehobl talked with other drivers telling them if they wanted to resign from the Union to go to Service Manager Emmett's office, get a copy of the resignation letter from him, sign it, and bring it to Drehobl. At some point in talking with the drivers Drehobl told driver Emanuel that he, Emanuel, was the only driver that had not signed a resignation letter. Drehobl also told Service Manager Emmett that Emanuel was the only driver that had not signed a resignation letter.

Driver Alex Oxendine first learned about a letter to resign from the Union and stop paying union dues from Drehobl when Drehobl asked if he wanted to get out of the Union. Oxendine told Drehobl he did not think so and asked if they could still have a union with only one member. Drehobl did not think there could be a one person union and told Oxendine the other drivers wanted to get out of the Union because it was too expensive. Drehobl told Oxendine he would place a copy of the resignation letter in Oxendine's message slot "cubby hole" in the driver's office. The next time Oxendine was in the driver's room a copy of the resignation letter was in his cubby. Oxendine telephoned Drehobl asking about filling out the top portion of the letter where a union officer's name is asked for. Oxendine did not understand Drehobl's instructions and did not sign the letter that day. The next occasion he was in the driver's room, around July 5, he was told to see Service Manager Emmett, which he did. Emmett first told Oxendine about a stop being added to his route. Oxendine testified Emmett then asked if he was getting out of the Union. Oxendine wanted to know if they could still have a union with only one member. Emmett did not know "and that's when he told me . . . that we don't really need the Union because it don't do nothing for us because we have no labor laws, and then he told me . . . we could save $50 a month if we got out the Union and we . . . really need the money."

Oxendine testified he was in the drivers room a week later (July 12) asking Service Manger Emmett about his route thinking he may have "messed up something" on it, when Emmett "asked me was I going to get out of the Union because everybody had got out the Union except for me and—I think his name [was] Emanuel, Tony." Oxendine said Emmett told him Emanuel was going to sign the resignation letter the next day he came to work. It was Oxendine's last day of work that week. Oxendine told Emmett he would sign the resignation letter but he did not have a copy. Emmett told Oxendine to get a copy from his desk, sign it, and turn it back in to him (Emmett) so he could send it to the Union. Oxendine agreed he would sign and turn it in at the end of his shift, which he did.

Driver Emanuel telephoned Union Steward Drehobl asking if he knew anything about the letter that had been circulating around the Company. Drehobl had not, but, told Emanuel he would check into it. Later Drehobl told Emanuel he and a couple of drivers had signed a resignation from the Union letter. Drehobl told Emanuel he never wanted to be in the Union.

Driver Emanuel has worked for the Company since 2000 and reports to Service Manager Emmett. Upon arriving at work, Emanuel normally proceeds to the driver's room to get his paperwork from a "cubby" specifically assigned to him. On one such occasion Emmett approached Emanuel offering him a copy of the resignation letter and "said look at the letter and sign it . . . and give it back to him." Emanuel testified he told Emmett he would look at it and sign it if he needed to. Emanuel was, at that time training a driver, and when he returned to the driver's room at the end of his shift, there was an envelope in his cubby addressed to "Tony" from Emmett. Emanuel had seen Emmett's writing before and knew this was Emmett's writing on the sealed envelope. In the envelope was a copy of an email chain initially starting with Service Manager Emmett's email to Director of Labor Relations Martwick dated July 2, asking what address the drivers would need to send their resignation letters to the Union. Martwick responded that same day with an address and added a notation that if the drivers did not have their resignation letters delivered to the Union by July 24, they would likely have to wait until the next year to get out of the Union. Also in the envelope was a blank copy of the resignation letter. Emanuel never signed the letter.

Emanuel testified Service Manager Emmett, sometime thereafter, called him into his office and asked if he had any problems with him personally or his supervision as to why he did not want to sign the resignation from the Union letter. Emanuel testified Emmett continued:

> Also, he stated to me that the laws of Florida have changed, the labor laws, and that our company would be better suited—that HR would [be] better suited to help me out if I had any problems. He also gave me an example of what they had done [for an] . . . employee . . . that he worked with in the Atlanta plant, which the guy had been fired for some reason, and he said that HR managed to get his job back, and also got back pay for him being fired . . .

Emanuel stated Emmett also told him he just wanted to let him know that if he could do anything for him personally just to get back with him and he would help me out. Emanuel testified Service Manager Emmett told him every driver had signed the resignation letter except Emanuel and one other driver.

Driver Christopher Robertson testified he signed a dues-checkoff authorization card in 2012 but at some point resigned from the Union. Robertson asked Service Manager Emmett what he needed to do if he wanted to get out of the Union. Emmett told Robertson he did not know but would check with corporate and find out. Robertson testified Emmett thereafter told him he had gotten a letter from corporate which Robertson read. Robertson concluded the letter was a way out of the Union; he signed and dated it on July 10, and gave it back to Service Manager Emmett. Robertson filled out all the union address information needed on the letter from "the union book" he had with him that day.

Former Driver Richardson testified Drehobl asked him, "do you guys want to have a union, or not" and added "I feel we don't need the Union." Richardson said his "whole state of mind was I really don't care" but voluntarily went ahead and signed the resignation letter on July 14. Richardson said, all information at the top of the resignation letter, had already been filled out when he signed the letter.

Drehobl made a copy on the Company's copying machine, of all the signed resignation letters he had collected, gave a copy to the Company and asked Emmett to place a copy in each employees' work file. Drehobl then, by certified mail, sent the signed letters to Union President Mike Stapleton. The Company reimbursed Drehobl for the cost of doing so. Drehobl testified that in addition to providing Service Manager Emmett copies of the signed resignation letters he "let [Plant Manager Batista] know what was going on with the drivers, that we were planning on getting out of the Union."

4. Service Manager Emmet's testimony on the resignation letters

Service Manager Emmett testified driver Hausen came to him asking how he could get out of the Union. Emmett did not know but found out. Emmett contacted corporate headquarters and Director of Labor Relations Martwick told Emmett the Florida Right to Work website had a draft letter for that purpose. Emmett located the letter on the website and printed a copy. Emmett testified that when Hausen again came to his (Emmett's) office asking about getting out of the Union he gave Hausen a copy of the form resignation letter. Emmett said Hausen was the first driver to return to a signed resignation letter. Emmett testified he gave a copy of the form resignation letter to each driver individually, with no one else present. Emmett said each driver came, individually, asking for a copy of the letter, which he gave them, but, never said a single word to any of the drivers. Service Manager Emmett specifically denied talking to drivers Drehobl, Oxendine, and Emanuel about the letter. Emmett said they talked to him when they, individually, returned their letters saying, "here's the envelope" which he took and filed in a cabinet. Emmett further explained he did not say a word to any of the drivers when they returned their signed resignation letters because "It wasn't none of my concern." Emmett testified the top portion of the resignation letter, asking for the appropriate union officer, union name, and union address were not filled out on the form letters. Emmett acknowledged, however, that those portions were filled out when returned to him, and, that it appeared to him the writing on those portions of some of the letters were similar but he did not know whose writing it was. Emmett testified he did not keep track of who, or how many, signed the open and unfolded resignation letters as the letters were returned to him. Emmett said he did not tell the drivers to return the letters to him, nor, did he know why they did so. Emmett stated he did not report to Plant Manager Batista or Director of Labor Relations Martwick the fact he had received the signed resignation letters from the drivers. Emmett stored the signed resignation letters in a locked file cabinet in his office and added "when I thought it was the right time that I was not going to receive anymore, I took them, folded them . . . put them in an envelope and handed them to Dirk Drehobl, To Mail. To do with as he wants to."

When specifically directed, by company counsel, to the complaint allegations attributed to him, Service Manger Emmett, denied: soliciting employees to resign from the Union; asking employees if they belonged to the Union; interrogating employees concerning what activities they were doing on behalf of the Union; asking employees if other employees were for or against the Union; and, asking employees about their grievances and indicating he could do something for them if they would resign from the Union.

5. The letter for the new hires

Service Manager Emmett created an in-house document, on company letter head, that three new hire unit employees signed in July. The letter, in pertinent part, follows:

> Mike Stapleton
> Teamsters Local
> Union # 385
> 126 N. Kirkman Road
> Orlando, FL 32811
>
> TO WHOM IT MAY CONCERN:
>
> Presently, I am an employee of Angelica Textile Services in Holly Hill, Florida.
>
> Currently, I am not a member of the Local Teamsters Union #385. At the present time, I have no intentions of joining the Union.
>
> Thank You,
>
> Employee Signature _____
> Printed Signature _____
> Street Address _____
> City, State & Zip Code _____
> Date _____
>
> Cc: Payroll
> Human Resources
> Director of Labor Relations & Compliance

Emmett provided the letter to three new hires, namely, Scott McLane, Fannell Jones, and Robert Miller. McLane signed the letter on July 12, Jones on July 15 and Miller signed the letter in that general timeframe but did not date it. Each driver signed his letter in Emmett's office, in Emmett's presence, and, left the documents with Emmett. When questioned whether any one asked the three new hires to fill out the letter Emmett responded, "Nobody asked them. They was informed I feel—I wanted to know who was—you know what, it's a form that they, on their own, willing [sic] filled out. I didn't ask them to fill them out." Service Manager Emmett acknowledged that what he started to say in his above answer at trial was that he "pretty much" wanted to know from the letter who was in the Union. Emmett kept a copy of each letter in his office, in addition to the departments and/or persons designated on the letter for receipt. The parties stipulated McLane, Jones, and Miller were employed by the Company on or before June 1, and continued to be employed as of July 31.

Article 7 "Probationary Period" of the parties' collective-bargaining agreement reflects new employees are in probationary status the first60 days of employment, but, become regular employees on the 61st of their employment.

6. The Johnnie's Poultry Letter

Driver Oxendine testified Service Manager Emmett called him into Emmett's office on November 1, saying he needed Oxendine to sign something for him. When Oxendine wanted to know what it was all about, Emmett "told me that the letter basically says that, either he didn't force me or strong-arm me to get out of the Union. And he needed this to be signed so he won't get in trouble." Oxendine signed the letter "because he (Emmett) didn't basically force me to get out." Oxendine said that although the letter refers to participating in an investigation, the only participating he knew of was just signing the letter.

Driver Richardson testified Service Manager Emmett, in late October, showed him a letter he wanted Richardson to sign. Emmett told Richardson "to read it and then sign it, stating that he had no involvement or tried to strong-arm me in getting out of the Union." Richardson had been in the Union but signed a letter in July to get out.

Service Manager Emmett testified corporate provided him a letter, with instructions to read it to each driver who had, in July, signed a resignation from the Union letter, to acknowledge, in this letter, that Emmett had not forced them or twisted their arms into signing the resignation from the Union letter. The letter, which sets forth the safeguards required by the Board's decision in *Johnnie's Poultry Co*., 146 NLRB 770 (1964), enf. denied 344 F.2d 617 (8th Cir 1965), is set forth:

> I am voluntarily providing information to the Employer's representative. I have been advised that the purpose of this investigation by the Employer is to investigate possible conduct which may constitute a violation of the National Labor Relations Act. I understand and have been so advised, that the Company is not interested in ascertaining whether I am for or against the Union, and that I have the right to join or refrain from joining any labor organization without fear of reprisal. The Company has advised me that it is interested only in ascertaining the truth.
>
> I have been advised that my participation or lack of participation in this investigation will not affect my job or rights as an employee, and I have a right to refuse to participate or provide a statement without fear of retaliation or reprisal by the Employer.
>
> I know that I may choose to leave at any time, or refuse to answer any questions, without affecting my job or rights as an employee.
>
> I am voluntarily agreeing to participate in this investigation and to provide a written statement, if necessary, to the Employer's representative.

Director of Labor Relations Martwick testified that on advice of outside counsel he had a letter drafted which he forwarded to Service Manager Emmett to read to all drivers, and, if they wanted to speak further with him (Emmett) they should sign the letter. Martwick

thereafter heard from Emmett that all drivers he gave the letter to, signed it, and "they all voluntarily said that Troy [Emmett] did not coerce them into doing anything."

There is no contention the language of the letter in any way violates the Act, but, rather the questioning that accompanied the letter is alleged to violated the Act.

7. The cessation of dues deductions and the Company's and Union's responses thereto

As noted elsewhere herein, Union Steward Drehobl in July mailed to the Union, and, provided the Company, copies of the resignation from the Union letters signed by certain unit drivers. On July, 23, Company Director of Labor Relations Martwick emailed Union Business Agent Dalton as follows:

> Dirk [Drehobl] provided us with copies of written correspondence he sent to the Teamsters from all but one of our drivers in our Holly Hill location that they revoke their membership in, or do not wish to become members of, the Teamsters. Since the number represents substantially more than 50% of the bargaining unit, it appears the Teamsters no longer enjoy representative status over this unit.
>
> We realize there is a contract bar according to the NLRB, we won't be filing a petition for a re-vote until the applicable period of time before expiration of the current contract. We will also abide by the terms and conditions of the CBA until we file the petition or sooner if the Teamsters wish to withdraw representation before that time. If the Teamsters wish to withdraw representation, please let us know.
>
> In the meantime, we will no longer be sending you dues via check-off for any of the individuals who have indicated to us that they no longer consent to dues being taken out of their paychecks. Please let me know if you have any questions.

On July 30, 2013, Union Secretary-Treasurer Clay Jefferies responded to Martwick's above email as follows:

> This responds to your email to Business Agent Dalton providing your legal interpretations of members'/employees' rights and threatening cessation of dues checkoff.
>
> First, Local 385 declined your invitation to disclaim further representational right as the exclusive bargaining agent for Angelica's bargaining unit employees; and we strongly caution you against abrogating the collective bargaining agreement or violating your continuing legal duty to bargain.
>
> Second, regardless of whether management may or may not have been involved with causing bargaining unit employees to resign from membership, you are

> cautioned to govern your actions carefully because your threatened cessation of dues checkoff breaches Angelica's legal and contractual obligations to Local 385. The employees'/members' also have a separate contractual obligation to Local 385, which your threatened cessation of checkoff will cause them to breach.
>
> Finally, should you carry through with your threat, Local 385 will have no choice except to consider resort to all appropriate legal/or economic options. We hope that it will not be necessary to do so.

It is undisputed the Company in July ceased deducting union dues from the wages of all unit employees who signed resignation from the Union letters.

On July 26, Union Secretary-Treasurer Jeffries individually notified each employee/member who submitted a resignation from the Union letter that the request was honored effective the date of Jeffries letter to them, but it did not absolve them from their responsibility to continue to pay a service fee. Jeffries advised the employees that although they were let out of the checkoff authorization they still must pay a service fee because it "is not conditioned on my [the employees'/members'] present or future membership in the Union." Jeffries also explained that because their membership application and dues checkoff was signed on October 6, 2012, and, because they had not timely notified the Union of their desire to revoke same the Union would continue to deduct a service fee from them unless and until it received written notification to revoke it within the appropriate timeframe. Jeffries explained the timely revocation procedure as:

> This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I [employee/member] give written notice to the company and the union at least sixty (60) days, but not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke same.

8. The Union's grievance and the Company's responsive actions

On October 11, Union Business Agent Dalton filed a grievance asserting the Company violated and continues to violate the parties' collective-bargaining agreement by not continuing to deduct and transmit to the Union a service fee the now nonmembers are obligated to pay. Dalton explains in the grievance that "On or about July 16, 2013, several drivers withdrew their Union membership. While these now non-members may not be required to pay monthly Union dues, they remain obligated to pay the Union a service or fair share fee" notwithstanding their nonmembership.

Driver Emanuel testified Service Manager Emmett telephoned him in October asking if what Union Business Agent Dalton had filed [the grievance] against the Company was directed specifically toward him (Emmett). Emanuel said he did not think so that it was directed at the Company as a whole.

On October 14, Company Director of Labor Relations Martwick emailed Plant Manager Batista and Service Manager Emmett:

> I think you should post this grievance [Dalton filed on November 11, 2013]. Let the drivers know that this is evidence that the only thing the union really cares about is their money! Tell them we are refusing to pay without their specific authorization and will continue to fight for them until we are told otherwise by the National Labor Relations Board or a judge!

Driver Emanuel noticed two specific items on the Union's bulletin board on October 27 and photographed them. Emanuel sent the photographs to Union Business Agent Dalton that same day from his Iphone. Emanuel identified the items as an email from Company Director of Labor Relations Martwick, dated October 14, to Plant Manager Batista and Service Manager Emmett urging them to post the Union's October 11 grievance related to the Union's assertion the Company violated the parties' collective-bargaining agreement by failing to deduct and remit to the Union certain dues the Union contended the Company was required to remit. Martwick described his rational for requesting the posting as; "I think you should post this grievance. Let the drivers know that this is evidence that the only thing the union really cares about is their money! Tell them we are refusing to pay without specific authorization and will continue to fight for them until we are told otherwise by the National Labor Relations Board or a judge!!" The second posted item on the Union bulletin board, according to Emanuel, was a copy of the Union's grievance.

Emanuel estimated the letters remained posted on the bulletin board about a week until Business Agent Dalton had them removed. Driver Oxendine testified he saw Director of Labor Relations Martwick's email posted in the drivers room in late October.

It is undisputed the Union has a glass enclosed bulletin board at the Company. In fact, the parties' collective-bargaining agreement provides for the Company to supply and provide space for a locked union bulletin board at its Holly Hill facility for posting by the Union of official business pertaining to the Company and Union.

III. Discussion, Analysis and Conclusions

A. Credibility

There are some credibility resolutions here that are essential to resolve. However, there are some incidents, meetings, or events where the facts are uncontested or there are simply differing versions of what was said, took place, or, done that do not require a precise resolution in order to decide the issues. I have not attempted to resolve or reconcile all potential or perceived conflicts, only those I deem pertinent in resolving the issues. That having been

acknowledged, I have not ignored nor failed to consider all evidence presented. I have accepted portions of witnesses' testimony while at the same time rejecting other portions. Such rejections and/or acceptance have, sometimes, resulted from supporting documents, other like or differing testimony and related factors.

First, as I observed Service Manager Emmett testify and listened to his answers to certain questions purported to him, I concluded he was making an effort to not recall, or testify to, anything he perceived might be unfavorable to the Company or that would call into question his prior actions or comments. One of the places in his testimony where his recall failed him involved whether he printed the name "Tony" on an envelope with items in it for driver Tony Emanuel. Emmett first responded, "It don't appear to be" my handwriting, and, then "I don't remember this envelope" and "I don't remember why I would sign it and put his name on it." When specifically, directly and point blank asked if he printed "Tony" on the envelope Emmett responded, "It don't look like my handwriting" and when pressed further he again responded, "I don't recall." I am persuaded this was not an inability but an unwillingness to recall fully and truthfully about the markings on the document and his actions with respect to the document.

Another place where the accuracy of Emmett's testimony caused me concern was that he did not keep track of, or run a tally, in any manner, on who, or how many drivers, signed and turned resignations letters into him. Emmett, for example, testified he did not give the letters to Drehobl as they were turned in, but, kept them in a locked file cabinet in his office area until "I thought it was the right time that I was not going to receive anymore, I took them, folded them . . . and put them in an envelope and handed them to Dirk [Union Steward Drehobl]." The letters were unfolded and open for Emmett to see and I am fully persuaded he knew how many, and, who had signed resignation letters turned into him. Other testimony will show his keen interest in who had signed, and, his questioning of the holdouts.

Another example of Emmett's testimony being incredible is that he did not say a word to the drivers when they came to him for, and returned to him, the resignation letters. Emmett admittedly sought to determine who was for the Union when he drafted an in-house letter for three new drivers to sign which stated their lack of interest in union membership. With such interest in who, among his drivers, was for, or against, the Union I am persuaded, as others testified, that Emmett questioned them about their union status. Additionally when, on July 2, Emmett emailed Director of Labor Relations Martwick about what address should the drivers put on the resignation from the union letters Martwick, that same day, provided the address for the Union and instructed Emmett to tell the driver if they did not deliver their letters to the Union by a certain date (July 24) it was likely they could not resign for another year. I am persuaded Emmett followed Martwick's instructions and spoke with the drivers notwithstanding, his testimony, he did not make any comments to them.

Simply stated, after observing Emmett testify and reviewing the record as a whole, I am unwilling to give credence to any testimony he gave that is contradicted by the testimony of others or the record otherwise demonstrates it is unworthy of belief.

Drivers Oxendine and Emanuel impressed me they testified fully, accurately, and truthfully. As such I credit their testimony as I summarize below the facts relied upon.

B. Service Manager Emmett's June and July Actions

It is alleged at paragraph 6 of the further amendment to the complaint that the Company, on or about June and July, by Service Manager Emmett, at its Holly Hill, Florida facility: solicited employees to resign their membership in the Union and revoke their authorizations for the deduction of union dues and fees from their wages; provided employees with letters of resignation of membership in the Union and the revocation of authorization for the deduction of union dues and fees from wages; interrogated employees about their union membership, activities and sympathies, and the union membership, activities and sympathies of other unit employees; and solicited complaints and grievances from employees and implied the Company would remedy them in order to discourage employees from joining or supporting the Union, and to encourage employees to resign from the Union and to revoke their authorizations for the deductions of union dues and fees from their wages.

The Board has articulated clear guidance for determining whether, and to what extent, an employer may provide assistance to its employees about resigning their union membership and withdrawing their authorization of union dues deductions. Employers may give employees information on how to resign from a union, without violating the Act, if the help it provides merely concerns the procedure or mechanics of doing so, and does not rise above mere "ministerial" assistance. However, an employer may not lawfully attempt to ascertain whether employees will avail themselves of the right to resign, nor provide assistance, or otherwise create a situation where employees tend to feel peril in refraining from such revocation of union membership. *Manhattan Hospital* 280 NLRB 113, 115 (1986). (employer which solicited resignations from the union; evidenced a continuing interest in knowing if employees intended to resign their union membership; and, in some instances offered assistance, was engaging in conduct aimed at causing disaffection from the union and unlawfully interfered with employees' free exercise of their Sec. 7 rights). *Narricot Industries* 353 NLRB 775, 776 (2009). (employer provided more than permissible "ministerial aid" where an employee asked his HR director "how to oust the union" and the director prepared a petition for the inquiring employee, as well as, two other employees, telling them the number of signatures needed and directing them to return the petitions to him daily). *Winn-Dixie Stores, Inc*., 128 NLRB 574, 588 (1960). (finding a violation of the Act where the employer prepared a form resignation from the union letter, addressed the envelopes to send the letters, and, saw to the mailing of the resignation letters to the union) An employer may not lawfully encourage or solicit employees to withdraw or resign from the Union. *Erickson's Sentry of Bend,* 273 NLRB 63, 64 (1984) (employer conduct, found to impair employee free choice in violation of the Act, where store manager, upon request of an employee, provided language for a petition to resign from the union, which the employee copied, signed and gave to the manager in the manager's office; and, the manager discussed with the employee which other employees the manager might approach about resigning from the union, calling those employees' to his office; thereby, gave the appearance the employer favored the petition, and, encouraged the employees to sign the petition). An employer may not give advice to employees on how to resign from the union. *Florida Wire & Cable,* 333 NLRB 378, 381 (2001). (solicitation of employees to resign from the union was found where the employer gave employees advice on how to resign from the union, displayed sample resignation letters at a meeting with employees, and, mailed sample

letters to employees). *Grondorf, Field, Black & Co. v. NLRB,* 107 F.3d 882, 886 (D.C. Cir. 1997) (employer prepared and distributed union resignation forms, obtained signatures of several employees, completed and dated forms, and forwarded the forms to the union's business manager). An employer may not lawfully encourage or urge its employees to get out of a union by informing or telling them that only one or two other employees had not withdrawn from the union. *Rock-Tenn Co.,* 238 NLRB 403, 404 (1978). (employer tells employee his failure to submit a dues-checkoff revocation would leave him one of a very small number of employees who continued to authorize the checkoff of union dues, and, was an obvious attempt by the employer to influence the employee to jump on the "bandwagon" and join the purported nearly unanimous group of employees who had revoked their checkoff authorizations which constituted an unlawful urging, encouragement, and solicitation by the employer of a checkoff revocation).

The actions, activities, and assistance of Service Manager Emmett, as outlined immediately below, clearly demonstrate his conduct constituted unlawful solicitation of unit drivers to resign from the Union and revoke their union dues deduction authorizations. He not only produced the resignation from the Union form letters but provided the letters to the drivers directing some of them to sign the letters and give them back to him. It is established he asked drivers whether they had signed resignation letters and obtained the address for mailing the letters. It is also established, as shown below, and elsewhere here, that he kept signed resignation letters in his office eventually providing them to the union steward to mail to the Union and reimbursed the union steward's expenses for mailing the letters. Emmett's conduct was clearly aimed at causing disaffection from the Union and tended to interfere with the employees' free exercise of their Section 7 rights and was unlawful interference that violates Section 8(a)(1) of the Act.

In summary, it is established Service Manager Emmett unlawfully solicited employees to resign their union membership and revoke their authorizations for the deduction of union dues and fees from their wages. I now highlight the facts that establish these violations.

Driver Oxendine first learned of a form letter to resign from the Union from Union Steward Drehobl. That fact is helpful in understanding some of Emmett's comments and actions. Drehobl not only told Oxendine about the form resignation letters Emmett had prepared from a website, but, also told Oxendine other drivers wanted to get out of the Union because it cost too much. Oxendine asked Drehobl if they could still have a union with only one member. Drehobl did not know.

Around July 5, Oxendine was in the driver's room at the Company and was told Service Manager Emmett needed to speak with him. Emmett told Oxendine something about his work route and then asked if he was getting out of the Union. Oxendine wanted to know if they could have a union with only one member. Service Manager Emmett did not know but said he would find out, and, then told Oxendine they did not need the Union because it did not do anything for them and he would save money if he got out. About a week later, in the driver's room, Emmett again asked Oxendine if he was going to get out of the Union and added everyone had gotten out except Oxendine and one other driver, but, even that driver was going to sign the resignation letter and get out of the Union.

Around this same time driver Emanuel, in the driver's room, was approached by Service Manager Emmett who offered Emanuel a copy of the resignation from the Union form letter and told him to look at it, sign it, and give it back to him. Emanuel committed to looking at it but would only sign it if he needed to. When Emanuel returned to the driver's room at the end of his workday there was an envelope in his "cubby" addressed to him, by his first name, in Service Manager Emmett's hand writing, which contained an email between Emmett and Director of Labor Relations Martwick providing an address to send the resignation letter to the Union, as well as, a copy of the form resignation letter. Emanuel never signed the letter. Sometime later Service Manager Emmett called Emanuel to his office and asked if Emanuel had any problems with him personally as to why he did not want to sign the resignation letter. Emmett then told Emanuel the Company's human resources department would be better suited to help him if he had any problems at the Company and gave an example of where the human resource department managed to get an employee his job back with backpay. Emmett told Emanuel if he could do anything for him personally he would and told Emanuel every driver had signed the resignation letter except Emanuel and one other employee.

Did Service Manager Emmett's exchanges with drivers Oxendine and Emanuel also constitute unlawful interrogation in violation of Section 8(a)(1) of the Act? I find the exchanges did.

The applicable test for determining whether questioning of an employee constitutes unlawful interrogation is based on a totality-of-the circumstances test. Namely, whether under all the circumstances the questioning, at issue, would reasonably tend to coerce the employee, to whom it is directed, to feel restrained from exercising rights protected by Section 7 of the Act. *Manor Care Health Services-Easton*, 356 NLRB No. 39 at 17 (2010), enfd. 661 F.3d 1130 (D.C. Cir. 2011). The Board has identified certain factors that are useful indicia in making a determination; however, there are no particular set of factors that are to be mechanically applied in each case. The Board in *Medcare Associates, Inc. (also cited as Westwood Health Care Center)* 330 NLRB 935, 939, 940 (2000), noted that in analyzing alleged interrogation it is appropriate to consider what has come to be known as "the Bourne factors," so named because they were first set forth in *Bourne v. NLRB,* 332 F.2d 47, 48 (2d Cir. 1964). The Bourne factors are: (1) the background, i.e., is there a history of employer hostility and discrimination?; (2) the nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?; (3) the identity of the questioner, i.e.,how high was he in the company hierarchy?; (4) place and method of interrogation, e.g., was employee called from work to the boss's office?; and, (5) truthfulness of the reply.

In these incidents Service Manager Emmett's questioning of Oxendine and Emanuel violated the Act. Service Manager Emmett summoned Oxendine, from the Company driver's room to speak with him. Emmett ostensibly spoke with Oxendine about his work route, but, then asked Oxedine if he was going to get out of the Union. Emmett supervised all unit employees, including Oxendine. The encounter took place in Emmett's office. Emmett questioned Oxendine at a time when he (Emmett) was distributing and collecting driver's resignation letters, as well as, attempting to persuade drivers to sign resignation letters. Service

Manager Emmett, a week later, approached Oxendine in the driver's room and again asked if he was going to get out of the Union adding everyone of the drivers, except he and one other, had already gotten out and, that other driver was going to sign a resignation letter to get out of the Union. Generally, it is unlawful for an employer to inquire as to the union sentiments of its employees, and, here it is quite clear Emmett's questioning of Oxendine would reasonably tend to coerce him so that he would feel restrained from exercising rights protected by Section 7 of the Act.

Considering the totality of the circumstances, Service Manager Emmett's questioning of driver Emanuel also constitutes unlawful interrogation in violation of the Act. Emmett approached Emanuel in the driver's room at the Company and provided him a copy of the resignation from the Union letter and told him to look at it, sign it, and give it back to him. Emanuel agreed to read it, but, would sign it only if he needed to. Emmett, that same day, placed a copy of the resignation from the Union letter in Emanuel's "cubby" in the driver's room with the Union's address for mailing the resignation letter. Thereafter, Service Manager Emmett called Emanuel to his office and asked him if he (Emanuel) had problems with Emmett personally as to why he did not want to sign the "resignation from the Union" letter. Under these circumstances, I find Emmett's questioning of Emanuel to be unlawful.

Did Service Manager Emmett unlawfully solicit employee grievances and imply the Company would remedy the grievances at a meeting with driver Emanuel at the Company in June/July? I find Emmett did.

"Section 8(a)(1) of the Act prohibits employers from soliciting employee grievances in a manner that interferes with, restrains, or coerces employees in the exercise of Section 7 activities." *American Red Cross Missouri-Illinois* 347 NLRB 347, 351 (2006). A manner that interferes with Section 7 rights will include an implied, or in some instances, explicit promise to correct the solicited grievance(s). It is not the solicitation of grievances itself that is coercive but rather the promise to correct the grievances that violates Section 8(a)(1) of the Act. *Manor Care Health Services-Easton*, 356 NLRB No. 39 slip op. 19 (2010), enfd. 661 F3d 1139 (D.C. Cir. 2011).

Here it is clear Service Manager Emmett solicited grievances from Emanuel at a time when Emmett was actively seeking to have unit drivers, specifically holdout Emanuel, withdraw their union membership and dues deduction authorizations. Emmett asked Emanuel if his continued refusal to sign a withdrawal letter was based on anything personal between he and Emanuel. Emmett told Emanuel every driver had withdrawn from the Union except he and one other driver. Emmett told Emanuel the Company's HR department would be better suited to help him if he had any problems at the Company, thus, implying Emanuel should go ahead and sign a "resignation from the Union" letter because the Company would better care for his employment concerns and needs. Emmett even gave Emanuel an example where the Company's HR department had managed to get an employee his job back after being terminated at the Company and with backpay. Emmett reminded Emanuel if he could do anything for him personally he would. The entire point of Emmett's conversation with Emanuel was to have Emanuel resign his union membership and revoke his dues deduction authorization. Emmett was conveying to Emanuel he could bring any grievance he had with

the Company to him, and he, and the human resources department, would remedy the grievance. Emmett's statements constitute interference with employee rights protected by Section 7 of the Act and violate of Section 8(a)(1) of the Act.

C. Service Manager Emmett's October and November Actions

1. Postings on Union's bulletin board

It is alleged at paragraph 7(a) of the amendment to the complaint that the Company, in October, by Service Manager Emmett, posted antiunion materials on the union bulletin board at the Holly Hill, Florida facility.

The parties' collective-bargaining agreement at article 8 "Miscellaneous" subparagraph (h) provides:

> The Employer will supply and provide suitable space for a locked Union bulletin board at its facility. Postings by the Union on such board are to be confined to official business pertaining to Angelica and/or the Union.

Driver Emanuel photographed two specific items he observed on the Union's bulletin board on October 27. The documents were: a copy of the Union's one-page grievance filed on October 11, in which the Union grieved that "On or about July 16, 2013, several drivers withdrew their Union Membership. While these now non-members may not be required to pay monthly Union dues, they remain obligated to pay the Union a service or fair share fee. The Company has breached the parties Collective Bargaining Agreement by refusing to deduct and remit said fees to the Union;" and, a copy of an email, dated October 14, 2013, from Company Director of Labor Relations Martwick to Plant Manager Batista and Service Manager Emmett in which Martwick states: "I think you should post this grievance. Let the drivers know that this is evidence that the only thing the union really cares about is their money? Tell them we are refusing to pay without their specific authorization and will continue to fight for them until we are told otherwise by the National Labor Relations Board or a judge!!"

Emanuel estimated the two documents remained posted on the bulletin board about a week until Union Business Agent Dalton had them removed.

Although the Government contends the posting of these two documents violates the Act, no cases were cited in support thereof. I am persuaded the Company did not violate Section 8(a)(1) of the Act by posting the Union's October 11 grievance on the Union's bulletin board and posting its own email expressing the Company's views on the Union's actions. Section 8(c) of the Act permits an employer and its agents to express their views on unionization as long as the opinions do not contain proscribed threats or promises. Here the Company merely exercised its free speech right in posting its views concerning unionization/union membership on the Union's bulletin board, and no challenge is made that the content of the posted materials are coercive. Cf. *Summitville Tiles,* 300 NLRB 64, 66 (1990) (the Board held where the employer prohibited both prounion and antiunion employees from posting materials at its facility and uniformly enforced the rule it was not a violation of

the Act for the employer to post its own antiunion materials.) The fact the postings were on the Union's bulletin board, which might be viewed as rude, insensitive or crass, does not elevate the postings to an unfair labor practice. I need not, and do not, address whether the Company's postings on the Union's bulletin board might constitute a violation of the parties collective-bargaining agreement.

2. The new hire letters

It is alleged at paragraph 7(b) of the amendment to the complaint that about October 31 and in early November Service Manager Emmett, at the Company, interrogated employees about their union sympathies and the sympathies of other employees.

Service Manager Emmett created a letter for three new hires to sign in July. The letter addressed "To Whom it May Concern" was created for the purpose, and, because Emmett wanted to know who was in the Union. The letter reflects that the driver signing it is an employee of the Company at its Holly Hill, Florida facility and is not a member of the Union and has no intention of joining the Union. The driver signing the letter provides his/her printed name, signature, address and date of signing. Service Manager Emmett denied he asked the three drivers to fill out the letters but admitted he provided the letters to them. Emmett contended they simply filled the letters out on their own, in his office, in his presence, and gave the filled out and signed letters to him. The letters reflect the three drivers' sentiments toward the Union, which was Emmett's acknowledged purpose. The totality of the circumstances here persuades me Service Manager Emmett's prepared letters constitutes unlawful interrogation. The intent of the letters would reasonably tend to coerce the employees, to whom the letters were presented, to feel restrained from exercising their rights, such as to join a union, protected by Section 7 of the Act. Emmett had the three drivers, as their immediate supervisor, come to his office; to read a letter he had prepared for them in order that he might ascertain if they currently supported the Union or intend to support the Union in the future. There is no evidence the three drivers had expressed their views or sympathies regarding the Union to Emmett, nor, is there evidence the three were given assurances there would be no reprisals if they elected not to sign the letter. Emmett's written questioning of the drivers constitutes unlawful interrogation in violation of the Act.

3. The *Johnnie's Poultry Co.* letter

It is alleged at paragraph 7(b) of the amendment to the complaint that about October 31 and in early November Service Manager Emmett, at the Company, interrogated employees about their union sympathies and the sympathies of other employees.

It is undisputed the Company created a letter type document setting forth the safeguards required by the Board's decision in *Johnnie's Poultry Co*., 146 NLRB 770 (1964), enf. denied 344 F.2d 617 (8th Cir. 1965), regarding an employer's questioning of employees during an investigation of potential unfair labor practices. The letter is set forth in full elsewhere in this decision and will not be repeated here. There is no contention the letter setting forth the safeguards violates the Act, but, rather the questioning by Service Manager Emmett, when he presented the letter, individually, to the drivers, violates the Act.

Drivers Richardson and Oxendine credibly testified Service Manager Emmett asked them individually to sign the *Johnnie's Poultry* letter of safeguards which he placed in front of them. Emmett told Oxendine, on November 1 in his office, that the letter basically said he (Emmett) did not force or strong-arm Oxendine into getting out of the Union. Emmett told Oxendine he needed the letter signed so he (Emmett) would not get in trouble. Oxendine signed the letter and did so "because he didn't basically force me to get out." Oxendine said that although the letter referred to participating in an investigation the only participating he did, or knew of, was just signing the letter. Driver Richardson, whom Emmett showed the letter in late October, testified Emmett asked him to read it, and sign the letter stating he (Emmett) had no involvement with, nor did he strong-arm Richardson, into getting out of the Union. In questioning employees, even where the employees have been provided, in writing, the established safeguards designed to minimize the coercive impact of employer interrogation; the employer, nevertheless, must question or converse with an employee "in a context free from employer hostility to union organization and must not itself be coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees." (Footnote citations omitted.) *Johnnie's Poultry Co*. 146 NLRB 770, 775 (1964). Here, Service Manager Emmett is trying to provide himself cover from his unlawfully soliciting drivers to resign from the Union and withdraw their dues deduction authorizations. The Company, and specifically Emmett, are hostile toward the Union in that Emmett not only solicited employees to sign resignation from the Union letters he had prepared for that purpose, he also interrogated new hires in writing. In context and the totality of circumstances, Service Manager Emmett's exchanges with Oxendine and Richardson constituted coercive interrogation in violation of Section 8(a)(1) of the Act.

4. The deduction of union dues

It is alleged at paragraph 8 of the complaint that since, on or about, July 19, the Company ceased making validly authorized deductions of union dues and fees from the wages of Unit employees and ceased remitting union dues and fees to the Union, as required by the parties collective-bargaining agreement. It is further alleged, deduction of union dues constitute terms and conditions of employment and, are mandatory subjects for collective bargaining, and; it is alleged the Company ceased making the deductions without the consent of the Union. It is also alleged the Company engaged in the above conduct on the basis of invalid revocations of union dues and fees that had been solicited directly or indirectly by the Company. The Company's conduct and actions are alleged to violate Section 8(a)(1) and (5) of the Act.

Company Director of Labor Relations Martwick notified Union Business Agent Dalton, in a July 23 email, that all but one of the unit drivers had revoked their union membership. In the email Martwick also notified Dalton, "we will no longer be sending you dues via check-off for any of the individuals who have indicated to us they no longer consent to having dues being taken out of their paychecks." The parties' collective-bargaining agreement, effective from October 2012 through July 2015, contains a union dues-checkoff provision (art. 19). The

Company, in July, ceased deducting union dues from the wages of all unit employees who signed resignation from the Union letters.

On July 30, Union Secretary-Treasurer Jeffries responded to Company Director of Labor Relations Martwick's email stating in part, "This response to your email to Business Agent Dalton providing your legal interpretations of members'/employees' rights and threatening cessation of dues check-off," "we strongly caution you against abrogating the collective bargaining agreement or violating your continuing legal duty to bargain." Jefferies reminded Martwick that regardless of whether the Company may, or may not, have been involved with coercing unit employees to resign from membership in the Union; the Company's notification of cessation of dues checkoff breached the Company's contractual obligations to the Union. Jefferies reminded the Company the members'/employees' also had a separate contractual obligation to the Union that the Company's cessation of checkoff would cause the employees'/members' to breach.

Unilateral changes of "wages, hours and terms and conditions of employment" by an employer obligated to bargain with a representative of its employees in an appropriate unit, violates Section 8(a)(1) and (5) of the Act. *NLRB v. Katz* 369 U.S. 736, 747 (1962). Dues checkoff is a matter related to wages, hours, and other terms and conditions of employment within the meaning of the Act and is therefore a mandatory subject of bargaining. *Tribune Publishing Co.* 351 NLRB 196 (2007), enfd. 564 F.3d 1330 (D.C. Cir. 2009)

Here it is clear, and I find, the Company unilaterally ceased deducting union dues in July at a time when the parties' collective-bargaining agreement was in force and effect, which agreement provides for union dues checkoff. The Company took action on a mandatory subject of bargaining without the consent and/or approval of the Union. The Company's unilateral cessation of dues checkoff stripped the employees of a contractual right they had expressly bargained for. The Company's actions can not be justified by the revocation of membership letters it received, and on which it relied, in ceasing to deduct union dues and remit same to the Union because the Company unlawful solicited the revocation of membership and dues deduction letters.

The Company's contention the original authorizations were invalid because they were not dated is without merit. The Company accepted and utilized the undated authorization cards for almost a year without contesting or objecting to the Union or the employee members the fact the cards were not dated. I need not, in this case, find what the escape window period to validly revoke dues authorizations may be; inasmuch as, the cessation of dues deduction and remittance was based solely on improperly and unlawfully obtained revocation letters.

The actions of the Company, as set forth immediately above, of unilaterally ceasing to deduct union dues and remit same to the Union, based on invalid revocations of membership and of authorizations of union dues and fees, violates Section 8(a)(5) of the Act and I so find.

Conclusions of Law

1. The Company, Angelica Textile Services, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, International Brotherhood of Teamsters, Local Union No. 385, is a labor organization within the meaning of Section 2(5) of the Act.

3. By, in July and October, interrogating its employees about their union membership, activities and sympathies and the union membership, activities and sympathies of other employees, the Company has violated Section 8(a)(1) of the Act.

4. By, in July, soliciting employees to resign their membership in the Union and revoke their authorizations for the deduction of union dues and fees from their wages, and by providing unit employees with letters of resignation of membership in the Union, and revocation of authorizations for the deduction of union dues, and fees from their wages, the Company has violated Section 8(a)(1) of the Act.

5. By, in July, soliciting complaints and grievances from employees and implying the Company would remedy them in order to discourage employees from joining or supporting the Union, and to encourage employees to resign from the Union and to revoke their authorizations for the deduction of union dues and fees from their wages, the Company violated Section 8(a)(1) of the Act.

6. By, since on/or about July, ceasing to make validly authorized deductions of union dues and fees from the wages of unit employees, and, by ceasing to remit the dues and fees to the Union, as required by the parties' collective-bargaining agreement, and by doing so without the consent of the Union, and, on the basis of invalid revocations of authorizations of union dues and fees solicited directly or indirectly the Company, violated Section 8(a)(1) and (5) of the Act.

REMEDY

Having found the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Having found the Company unlawfully ceased making validly authorized deductions of union dues and fees form the wages of unit employees, and remitting the dues and fees to the Union, I recommend the Company be ordered to promptly submit to the Union an amount equal to the full union dues and fees for the unit employees from July 2013 until the Board's Decision and Order issues, or, at such time as valid revocations are submitted by the employee/members The moneys due the Union shall be computed in accordance with *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 501 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1171 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). No portion of the

moneys may be deducted from the employees/members' wages as the moneys owed the Union results directly from the Company's violations of the Act. I also recommend, the Company be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees" in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

On these finding of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Company, Angelica Textile Services, Inc., Holly Hill, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their protected concerted and/or union activities.

(b) Unlawfully encouraging or soliciting employees to resign from the Union and/or revoke their authorizations for the deduction of union dues and fees from their wages.

(c) Soliciting complaints and grievances from its employees and promising and/or implying to remedy those complaints and grievances, in order to discourage union membership, and, to encourage employees to revoke their union dues deduction authorizations.

(d) Failing to make validly authorized deduction of union dues and fees from the wages of unit employees and remitting the dues and fees to the Union.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the validly authorized deductions filed with it for union dues and fees, as required pursuant to the parties' collective bargaining agreement and remit to the Union the dues it should have checked-off, with interest, as outlined in the remedy section of this decision.

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amount due under the terms of this Order.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days after service by the Region, post at its facility in Holly Hill, Florida, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Company's authorized representative, shall be posted by the Company and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electric means, if the Company customarily communicates with its employees by such means. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since July 23, 2013.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Company has taken to comply.

IT IS FURTHER ORDERED the Complaint be, and hereby is, dismissed insofar as it alleges violations of the Act other than as found herein.

Dates at Washington, D.C. October 15, 2014

William N. Cates
Administrative Law Judge

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT solicit complaints from you and promise to remedy them in order to discourage you from selecting union representation.

WE WILL NOT unlawfully encourage or solicit our employees to resign from the International Brotherhood of Teamsters, Local Union No. 385 or to revoke their authorizations for the deduction of union dues and fees from their wages.

WE WILL NOT fail to make validly authorized deduction of union dues and fees from the wages of Unit employees and remitting the dues and fees to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make validly authorized deductions filed with us of union dues and fees as required pursuant to our collective- bargaining agreement with the Union and **WE WILL** remit to the Union dues we should have checked-off with interest.

ANGELICA TEXTILE SERVICE, INC.
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

201 East Kennedy Boulevard, South Trust Plaza, Suite 530, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-118367 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2455